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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,809	11/20/2000	Tal I Lavian	082771.P258C	9849

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EXAMINER

VU, VIET DUY

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/716,809

Applicant(s)

LAVIAN ET AL.

Examiner

Viet Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Non-Art rejection:

1. The non-statutory double patenting rejections of claims 16-33 under 35 USC 101 over prior U.S. patents 6,170,015 and 6,175,868, paper #4, mailed 12/2/03, are hereby incorporated by reference.

Art Rejection:

2. The text of 35 USC 103(a) not cited here can be found in the previous office action.

3. Claims 16, 18-19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimony et al, U.S. pat. No. 5,898,669, in view of Murthy et al, U.S. pat. No. 6,545,982.

Shimony discloses a network device comprising:

- a) an external network data port (46, fig. 4b),
- b) a network data monitor (10, fig. 4b) coupled to the external data port to monitor network data traffic over the network data port, i.e., comparing the network data traffic to a threshold condition (see Shimony's col 6, lines 29-54 and col 8, lines 1-11),
- c) a processor (74, fig. 5) in the network data monitor to evaluate the network data traffic (Shimony's col 7, lines 57-65),

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d) a memory (44, fig. 5) included in the network data monitor for storing data and program instructions to be executed by the processor (see Shimony's col 6, lines 55-59 and col 8, lines 31-64).

Shimony does not teach sending program instructions to the network device through a maintenance port. Murthy teaches providing such a maintenance port (11, fig. 1) for allowing system administrator to access and control the operation of the network device (see Murthy's col 4, lines 47-61).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Shimony with Murthy's maintenance (supervisor access) port because it would have allowed controlling and/or modifying the operations of the network switching device, e.g., upgrading new rate table (see Shimony's col 8, lines 47-64).

4. Claims 17, 20-21 and 23-33 are not rejected on arts. They will be allowed upon receipt of terminal disclaimers to disclaim the present invention against prior patents 6,170,015 and 6,175,868.

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Response to Amendment:

5. Applicant's arguments filed on 4/5/04 with respect to claims 16, 18-19 and 22 have been fully considered but they are not deemed persuasive. It is noted that the rejection has been slightly revised to better address applicant's concerns in the remarks.

Applicant alleges that Shimony does not teach the claimed invention because Shimony's rate compare unit (72, fig. 5) does not equal to the claimed network data monitor that requires a memory and a set of program instructions.

This is not found persuasive. It is noted that Shimony's network data monitor in fact comprises the traffic management unit that includes the rate compare unit and a memory for storing a set of program instructions. The operation of the traffic management unit by executing the program instructions stored in the memory is clearly disclosed in Shimony (see Shimony's col 8, lines 31-64).

Conclusion:

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS

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OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is (703) 305-9597. The examiner can normally be reached on Monday through Friday from 8:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached on (703) 305-8498.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



VIET D. VU
PRIMARY EXAMINER

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5/12/04